IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 5095/2004
(Jai Prakash Chobisa Vs. State of Rajasthan & Ors.)

Date of Order : 15/01/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Harish Purohit for the petitioner.
Mr. Rameshwar Dave, Dy. Govt. Advocate for non-petitioners.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the non-petitioners to consider his case for promotion to the post of Senior Teacher/ Teacher Gr.II under the Rajasthan Educational Subordinate Service Rules, 1971 (for short 'the Rules of 1971' hereinafter).

I have heard learned counsel for the parties.

It is contended by learned counsel for the petitioner that the petitioner has been denied consideration for promotion to the post of Senior Teacher/ Teacher Gr.II on the ground that the petitioner does not possess the qualification of Higher Secondary with Science as optional subject. He submits that the

petitioner has passed the higher secondary with Agriculture Science as optional subject and the expression science has a wide meaning which includes the agriculture science as has been held by a Division Bench of this Court in Shyam Lal Sharma Vs. State of Rajasthan and Others RLW 1995 (1) (Raj.) 222. Learned counsel further submits that the petitioner has passed the secondary examination in the year 1979 vide Annex.1 from Rajasthan Board of Secondary Education, Ajmer with Mathematics, Physics and Chemistry as optional subjects. He has placed on record the mark-sheet of the Secondary School Examination, 1979 issued by the Board of Secondary Education, Rajasthan wherein the optional subjects of the petitioner have been shown as Physics, Chemistry and Maths and in all the three subjects, the petitioner was declared passed and therefore, according to learned counsel for the petitioner, it cannot be said that the petitioner did not possess the requisite qualification of science subject. Learned counsel further submits that by communication dated 30.3.2002 received by the petitioner on 16.4.2002, the non-petitioner Principal, Government Devendra Girls Secondary School, Dungarpur communicated to him that the District Education Officer, Dungarpur, by his communication dated 5.3.2002 has cancelled his fixation in the pay scale of Rs. 5000-8000. That order came to be challenged by the petitioner before this Court by way of a writ petition being S.B.Civil Writ

Petition No. 1462/02 which came to be decided by order Annex.11 dated 11.2.2003 and pay fixation of the petitioner was restored by the order of this Court which was withdrawn by the non-petitioner by order dated 30.3.2002. Learned counsel submits that earlier the pay fixation was withdrawn by the non-petitioners on the ground that the petitioner did not possess the requisite qualification of higher secondary with science subject, but this Court vide order dated 11.2.2003 negatived the contention raised by the non-petitioners and restored the pay fixation and thus according to learned counsel, the petitioner is possessing the requisite qualification for promotion on the post of Senior Teacher Gr.II. Learned counsel further submits that the channel of promotion from the post of Laboratory Assistant to the post of Senior Teacher Gr.II is available under the Rules of 1971.

Learned Deputy Government Advocate appearing for the non-petitioners submits that as per the Rules of 1971, the post of Senior Teacher Gr.II is to be filled in by direct recruitment and the persons holding the post of Laboratory Assistant having qualification of higher secondary with science as optional subject have been found eligible for promotion to the post of Senior Teacher Gr.II and according to learned Deputy Government Advocate, the petitioner does not possess the qualification of higher secondary with science as optional subject

though one of the optional subject of the petitioner is agriculture science. He has annexed relevant portion of the Rules of 1971 as Annex.R/1 showing appointment to the post of Laboratory Assistant 100% by direct recruitment and requisite qualification is higher secondary with science as optional subject.

A Division Bench of this Court in Shyam Lal Sharma Vs. State of Rajasthan and Others (supra) held as under :-

> "9.The syllabus/course of study framed by the Sheep and Wool Training Institute, Jaipur for the trainees prescribes the minimum requisite and essential qualification for training of 8 months course of Stock Assistance. According to it the candidate applying for the training should have passed Higher Secondary Examination from the recognised Board along with Biology and Agriculture Science. If the advertisement issued on 20.8.91 failed to mention agriculture science as an essential qualification the appellant's candidature could not have been rejected. The advertisement should have been in accordance with syllabus. Apart from it the advertisement used the word "science". The word "science" is always used in a broader sense. It has many branches viz. Physics, Chemistry, Botany, Zoology, Agriculture, Home Science, Mathematics and many others.
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> 10.Admittedly, the appellant has passed his Higher Secondary Examination having Agriculture, Animal Husbandry and Biology as optional subjects. The Sheep and Wool Department is primarily concerned with animal husbandry and agriculture. The appellant having this qualification with him could not have been denied admission for admission in the said Institution."

While considering the expression "science", this Court further held as under :-

> "11. The word "Science" has been explained in the

> Webster's Dictionary as a branch or department of systematized knowledge, knowledge classified and made available in work, life, or the search for truth: knowledge obtained and tested through use of the scientific method. Such knowledge concerned with the physical world and its phenomena; a branch of study that is concerned with observation and classification of facts and especially with the establishment or strictly with the qualitative formulation of verifiable general laws chiefly by induction and hypotheses; a system based or purporting to be based upon scientific principles.
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> 12. The word "Science" has not been defined anywhere. Science as such cannot be treated as a particular subject of study of physical, chemical and animal world. Agriculture is a branch of science and in popular parlance it is known as agriculture science. It is a science.
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> 13. If the candidate having passed in mathematics subject has been accepted by the Institute for training, treating it to be a science then how the petitioner was denied admission when he had passed his Higher Secondary examination with agriculture science which was more essential for Sheep and Wool Training Course."

The Rules of 1971 provides the promotional avenues from the post of Laboratory Assistants to Senior Teacher Gr.II. According to the Rules of 1971, the appointment to the post of Senior Teacher Gr.II is required to be made in the ratio 50:50 by way of direct recruitment and promotions from amongst the Teachers, Laboratory Assistants and Teachers in Deaf, Dumb & Blind Schools. Thus, according to the Rules of 1971, 50% of the post of Senior Teacher Gr.II are to be filled in by way of promotion from amongst the Teachers, Laboratory Assistants

and Teachers in Deaf, Dumb & Blind Schools.

Keeping in view the decision of Division Bench of this Court in Shyam Lal Sharma Vs. State of Rajasthan and Others (supra), and the fact that the petitioner possessed the qualification of higher secondary with agriculture science as optional subject as also had three optional subjects i.e. Physics, Chemistry and Maths in Secondary School Examination, the petitioner deserves consideration for promotion to the post of Senior Teacher Gr.II.

In the result, the writ petition is allowed. The non-petitioners are directed to consider the case of the petitioner for promotion to the post of Senior Teacher Gr.II under the Rules of 1971 and if found eligible he be promoted on the said post from the date his juniors have been promoted with consequential benefits. There shall be no order as to costs.

(H.R.PANWAR),J.

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